



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 27, 2017

Mr. Kipling D. Giles  
Director & Senior Counsel  
Legal Services Division  
CPS Energy  
P.O. Box 1771  
San Antonio, Texas 78296

OR2017-14275

Dear Mr. Giles:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 663835.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS") received a request for information pertaining to a specified power plant. You claim the submitted information is excepted from disclosure under section 552.133 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.133 of the Government Code excepts from disclosure a public power utility's information that is "reasonably related to a competitive matter."<sup>1</sup> Gov't Code § 552.133(b). Section 552.133 provides in relevant part the following:

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<sup>1</sup>We note the information at issue falls within the scope of section 552.022(a)(3) of the Government Code, which requires disclosure of "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]" unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(3). Section 552.133(c) provides, however, that "[t]he requirement of Section 552.022 that a category of information listed under Section 552.022(a) is public information and not excepted from required disclosure under this chapter unless expressly confidential under law does not apply to information that is excepted from required disclosure under [section 552.133]." *Id.* § 552.133(c).

(a) In this section, “public power utility” means an entity providing electric or gas utility services that is subject to the provisions of this chapter.

(a-1) For purposes of this section, “competitive matter” means a utility-related matter that is related to the public power utility’s competitive activity, including commercial information, and would, if disclosed, give advantage to competitors or prospective competitors. The term:

(1) means a matter that is reasonably related to the following categories of information:

(A) generation unit specific and portfolio fixed and variable costs, including forecasts of those costs, capital improvement plans for generation units, and generation unit operating characteristics and outage scheduling;

(B) bidding and pricing information for purchased power, generation and fuel, and Electric Reliability Council of Texas bids, prices, offers, and related services and strategies;

(C) effective fuel and purchased power agreements and fuel transportation arrangements and contracts;

(D) risk management information, contracts, and strategies, including fuel hedging and storage;

(E) plans, studies, proposals, and analyses for system improvements, additions, or sales, other than transmission and distribution system improvements inside the service area for which the public power utility is the sole certificated retail provider; and

(F) customer billing, contract, and usage information, electric power pricing information, system load characteristics, and electric power marketing analyses and strategies[.]

*Id.* § 552.133(a)-(a-1)(1). We note section 552.133(a-1)(2) provides fifteen categories of information that are not competitive matters. *See id.* § 552.133(a-1)(2).

We understand CPS is a municipally owned utility for purposes of section 552.133. You state the submitted information, if released, would negatively impact CPS’ competitive position within the wholesale energy market and would cause financial harm to CPS and its customers. The information at issue is not among the fifteen categories of information

expressly excluded from the definition of “competitive matter” by section 552.133(a-1)(2). Based on your representations and our review, we find the submitted information relates to a competitive matter as defined by section 552.133(a-1). *See id.* § 552.133(a-1)(1)(A)-(F). Thus, CPS must withhold the submitted information under section 552.133 of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/sb

Ref: ID# 663835

Enc: Submitted documents

c: Requestor  
(w/o enclosures)